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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111128700-2405-02]

RIN 0648-BB66

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Recreational Accountability Measures

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes the recreational accountability measures that were implemented in January 2012 to address an overage of the fishing year 2010 Gulf of Maine haddock sub-annual catch limit by the recreational fishery. Newly available data indicate that there was no overage by the recreational fishery for fishing year 2010. Therefore, possession limits and an increase in the minimum size for haddock caught in the Gulf of Maine by recreational anglers aboard private or charter/party vessels are no longer needed.

DATES: Effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: An analysis of the impacts of the accountability measures that are being removed by this action is included in the Final Environmental Impact Statement (FEIS) prepared for Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). Copies of Amendment 16, its Regulatory Impact Review (RIR), and the FEIS are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill

2, Newburyport, MA 01950. The FEIS/RIR is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, (978) 675-2153, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 16 to the NE Multispecies FMP (75 FR 18262, April 9, 2010) established a process to set and distribute ACLs among the various components of the groundfish fishery, which includes an allocation to the recreational fishery for Gulf of Maine (GOM) cod and haddock. Amendment 16 also established accountability measures (AMs) that would be implemented if any ACL is exceeded during a particular fishing year (FY). If the recreational fishery exceeds its sub-ACL for GOM cod or GOM haddock, NMFS is required to implement AMs to prevent the recreational fishery from exceeding the pertinent sub-ACL in time for the following fishing year. NMFS is required to develop these AMs in consultation with the New England Fishery Management Council (Council), and may consider adjustments to fishing seasons, minimum fish size, or possession limits to achieve the necessary reductions. The effective period of such measures can be modified through notice consistent with the Administrative Procedure Act if it is determined that such measures are not necessary to prevent overfishing or ensure that a similar overage does not occur during future fishing years.

In FY 2010, the recreational fishery was allocated 324 mt of GOM haddock as part of Framework Adjustment 44 to the NE Multispecies FMP (April 9, 2010, 75 FR 18356). Based on Marine Recreational Fishing Statistical Survey (MRFSS) data, the only available information at the time, NMFS determined that the recreational fishery caught 396.3 mt of GOM haddock during FY 2010. This represented an overage of 72.3 mt, or 22.3 percent of the FY 2010 GOM haddock recreational sub-ACL. After consulting with the Council and its Recreational Advisory

Panel, NMFS published an interim final rule (76 FR 82197, December 30, 2011) that implemented a 9-fish possession limit (previously there was no constraint on possession) and increased the minimum fish size for haddock caught in the GOM Regulated Mesh Area from 18 in (45.72 cm) to 19 in (48.26 cm) total length.

The Marine Recreational Information Program (MRIP), initiated in 2008, provides a new way of counting and reporting marine recreational catch and effort; due to improved statistical techniques, it results in less-biased and more-accurate data than MRFSS. Through the end of calendar year 2012, data already collected using MRFSS will be re-estimated using MRIP until a full transition is completed for the 2013 calendar year. Therefore, in 2012, NMFS will have both MRFSS and MRIP catch estimates. The MRIP data for the recreational GOM haddock catch became available at the beginning of 2012, after the interim final rule to implement AMs was published on December 30, 2011. Using the MRIP data, NMFS determined that the recreational fishery only caught 297.4 mt of GOM haddock during FY 2010, which is an underage of 26.6 mt, or 8.2 percent of the FY 2010 GOM haddock recreational sub-ACL. Because the FY 2010 recreational catch actually resulted in an underage, the AMs are no longer necessary.

NMFS received 12 public comments during the 15-day comment period on the interim final rule implementing AMs, some specifically regarding the effectiveness and need for these measures to address haddock catch; the comments are summarized below. Additionally, on February 7, 2012, NMFS received a request from the Council to revisit the implemented GOM haddock AMs in light of the new MRIP information indicating that the recreational fishery did not exceed its sub-ACL for this stock.

Given this new information, and after review of the public comments received on the interim final rule implementing the recreational AMs, NMFS is removing the 9-fish possession limit and the increased minimum fish size of 19 in (48.26 cm) total length for haddock caught in

the GOM Regulated Mesh Area. As a result of this action, as before implementation of the recreational AMs, there is no possession limit and the minimum size for haddock is 18 in (45.72 cm) total length.

Comments

Comments: NMFS received comments from 12 individuals. Seven individuals did not support the changes in possession limit or minimum fish size implemented by the interim final rule; no individuals wrote in support of the measures. Ten individuals commented on the data relied upon to approve the interim final rule measures and question whether economic impacts were considered prior to implementing the interim final rule. There were also several comments unrelated to the AMs implemented through the interim final rule and are therefore not relevant to this action.

Response: In Amendment 16, the Council analyzed a series of potential AMs in the recreational fishery, such as possession limits and changes in the minimum fish size, including the measures implemented by the interim final rule. The economic impacts of potential AMs in the recreational fishery were analyzed in Sections 7.5.2.3.2.3 and 7.5.2.3.6.3 of the Amendment 16 FEIS. Until recently, MRFSS data was the best available scientific information to assess catch by recreational anglers and to determine whether or not an AM was needed to address an overage. However, MRIP data, which became available on January 23, 2012, after the recreation AMs were implemented on January 6, 2012, are the result of a less biased and more accurate method of counting and reporting recreational catch and effort than the previously used MRFSS data. Because MRIP data indicates that there was no overage in 2010, the AMs are no longer necessary. NMFS is removing the AMs through this final rule.

Classification

The Acting Regional Administrator, Northeast Region, NMFS, determined that removing the management measures by this final rule is consistent with the Magnuson-Stevens Act and other applicable law.

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

A Regulatory Flexibility Act analysis was completed for Amendment 16 to the NE Multispecies FMP, which included the measures in place prior to the interim final rule and the measure implemented by the interim final rule. Removing the interim measures through this final rule does not require any additional RFA analysis.

Pursuant to 5 U.S.C. 553(b)(3)(B), the Acting Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirements for prior notice and the opportunity for public comment for removing the AMs by this final rule because a delay in its effectiveness would be impracticable, unnecessary, and contrary to the public interest. The AMs implemented in the interim final rule were intended to address an overage of the FY 2010 GOM haddock sub-ACL by the recreational groundfish fishery. Because later data concluded that there was no overage, the AMs are no longer necessary. The recreational haddock fishing season begins in April, and removing the measures as early as possible will avoid unnecessary negative economic impacts to the charter/party vessel operators who derive income from the recreational haddock fishery.

The Acting Assistant Administrator for Fisheries, NMFS, also finds good cause to waive the 30-day delayed effective requirement, pursuant to 5 U.S.C. 553(d)(3). The possession limits and increased minimum fish size measures implemented in the interim final rule reduce potential landings and devalue recreational trips. Removing these restrictions in a timely way will avoid these unnecessary adverse economic impacts. The recreational fishing season, particularly for

charter/party vessels, begins in April of each year. NE multispecies charter/party operations advertise and try to book fishing trips prior to the start of their fishing season as part of their yearly business plans. Delaying the removal of the AMs by 30 days would complicate business plans currently being developed by charter/party operations, and prohibit them from effectively planning, advertising, and booking trips for the upcoming fishing season. Further, delays in removing the AMs for GOM haddock could result in business changes midway into the spring recreational fishing season, which could result in unanticipated negative economic impacts to charter/party vessel operators and associated supporting businesses due to confusion in applicable regulations, changes to advertisements, and potentially cancelled trips. Therefore, it is contrary to the public interest to unnecessarily delay the removal of the AMs, and good cause exists to waive the 30-day delayed effectiveness requirement.

Finally, pursuant to 5 U.S.C. 553(d)(1), this rule is exempt from the 30-day delayed effectiveness requirement because it relieves restrictions. By removing the AMs originally implemented in the interim final rule, this rule will ease the burdens of the regulated community, and no legitimate reason exists to delay its effectiveness.

This final rule does not contain policies with federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 17, 2012.

Samuel D. Rauch III, Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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